

**REMARKS**

The rejections of Claims 11, 12, 14 and 19 as being anticipated by Hagele et al and of Claims 11, 13, 15, 16 and 20 as being anticipated by Polly, both under 35 U.S.C. §102(b), are deemed moot in light of the inclusion of Claim 17 in Claim 11.

However, the rejection of Claims 17 and 18 as being unpatentable over Hagele et al in view of Nishida under 35 U.S.C. §103(a) is respectfully traversed, and reconsideration is requested in view of the following comments.

The suggested hypothetical combination of the two patents is based upon impermissible hindsight reconstruction, not upon what the teachings of Nishida would have suggested to one skilled in the art in connection with the Hagele et al gear shifting method. The latter, somewhat like the present invention, seeks to go from one state to another without the need for a switch by using accelerator pedal movement so as to minimize the action required by the driver, particularly when moving into a high speed.

One skilled in the art would not have looked to Nishida's control system which is intended to operate only at low vehicle speeds to prevent driver fatigue. That is accomplished during the slow-run mode by brake, not accelerator, operation. In that mode, when the brake is not applied, the vehicle speed is controlled to become the target slow-run speed and, when the brake is applied, no driving force in the vehicle travel direction is produced (col. 2, lines 2-8). Even in connection with the use of a means for calculating inter-vehicle distance,

the Nishida system is intended for the slow-run mode (col. 2, line 42 to col. 3, line 3). And entry into that mode is accomplished only by a switch 2 (col. 4, lines 32-33), the very thing avoided by the present invention and even the Hagele et al method.

Accordingly, a *prima facie* case of obviousness has not been made with regard to Claim 17 now incorporated in Claim 11. Therefore, early and favorable action is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #095309.57327US).

Respectfully submitted,

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